

Application No. 10/773,894
Amendment dated October 17, 2006
Reply to Office Action of July 17 2006

Amendments to the Drawings:

The attached sheets of drawings include amendments to Figs. 1 and 2. These sheets, which include Figs. 1-2, replace the original sheets including Figs. 1-2. In Figure 1, the reference numeral for the content consumers was changed from 24 to 18, and in Fig. 2, previously omitted Distribution Facility box 12 was added, and previously omitted reference numeral 36 has been added to the Index box.

Attachment: Replacement Sheets 1 and 2

REMARKS / ARGUMENTS

Claims 1, 15, and 20 have been amended; Claims 3, 4, 16, and 17 have been canceled, without prejudice or disclaimer, and new Claims 21-24 have been added; therefore, Claims 1, 2, 5-15, and 18-24 are pending. Applicant has carefully considered the application in view of the Examiner's action and, in light of the foregoing amendments and the following remarks, respectfully requests reconsideration and full allowance of all pending claims.

As a preliminary matter, in Figure 1, and paragraphs beginning at page 9, lines 6 and 28, and page 10, line 10, the reference numeral for the content consumers was changed from 24 to 18 to be consistent with the specification at page 8, line 16. In Figure 2, previously omitted Distribution Facility box 12 was added to be consistent with Figure 1 and page 10, line 10. Further to Fig. 2, previously omitted reference numeral 36 has been added to the Index box to be consistent with Figure 1 and page 10, line 16. These amendments have been effectuated without adding any new matter to the specification as originally filed. It is therefore respectfully requested that these amendments be entered.

Claim 20 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant's regard as the invention. In response, Applicants have amended Claim 20 to overcome the rejection, without adding any new matter to the application as originally filed. In light of the foregoing, Applicant respectfully requests the withdrawal of the rejection of Claim 20 under 35 U.S.C. § 112, second paragraph.

Claims 1-20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Publication No. 2003/0023505 to Eglen et al. (hereinafter "Eglen"). In response, Applicant has cancelled Claims 3, 4, 16, and 17, without prejudice or disclaimer, rendering the rejection thereof moot, and has amended independent Claims 1 and 15 such that they now clearly distinguish and are patentable over the cited reference.

Specifically, independent Claims 1 and 15 have been amended to more particularly point out and distinctly claim one of the distinguishing characteristics of the present invention,

namely, that content files are initially priced responsive to historical demand for content files authored by respective content creators of each of the content files. These amendments are supported in the specification as originally filed, for example, at page 11, lines 4-17 and 25-27, and at page 12, lines 26-28, and therefore add no new matter to the application.

Eglen has been cited as fully disclosing Applicant's invention as recited in Claims 1 and 15. *Eglen*, including paragraphs 59, 123, and 136, however, fails to teach or suggest initially pricing content files responsive to historical demand for content files authored by respective content creators of each of the content files, as now recited by independent Claims 1 and 15, as amended. As pointed out in an earlier response, paragraphs 59 and 136 merely state who is able to set the initial price of an item. Paragraph 123 merely states that an initial price may be based on historical prices for similar content, without elaborating on what is meant by "similar" content. However, it is well-known that a common content creator may author or create many different, or dissimilar, types of content. Therefore, whatever is meant by "similar content", it is clearly not to be confused with content authored, or created, by a common content creator.

In view of the foregoing, it is apparent that *Eglen* fails to teach, suggest, or even render obvious the unique combination now recited in independent Claims 1 and 15. It is therefore respectfully submitted that Claims 1 and 15 clearly and precisely distinguish over *Eglen* in a patentable sense, and are therefore allowable over *Eglen* and the remaining references of record. Accordingly, it is respectfully requested that the rejection of Claims 1 and 15 under 35 U.S.C. § 102(b) as being anticipated by *Eglen* be withdrawn.

Claims 2, 5-14, and 18-20 depend from and further limit independent Claims 1 and 15, in a patentable sense, and, for this reason and the reasons set forth above, are also deemed to be in condition for allowance. Accordingly, it is respectfully requested that the rejections of dependent Claims 2, 5-14, and 18-20 be withdrawn.

New Claims 21-24 are supported at page 12, lines 5-14, of the specification as originally filed, and therefore add no new matter to the application. Claims 21-24, furthermore, depend

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from and further limit independent Claims 1 or 15, in a patentable sense, and, for this reason and the reasons set forth above, are also deemed to be in condition for allowance.

By this amendment, Claims 21-24 have been added resulting in a total of 20 claims, 2 of which are independent claims. Accordingly, Applicants do not believe any fees are due; however, in the event that any other fees are due in connection with the filing of this paper, the Commissioner is hereby authorized to charge any such fees (other than issue fees), and to credit any overpayment made, in connection with the filing of this paper to Deposit Account No. 50-2032 of Scheef & Stone, L.L.P.

Applicant has now made an earnest attempt to place this application in condition for allowance, or in better condition for appeal. Therefore, Applicants respectfully request, for the reasons set forth herein and for other reasons clearly apparent, full allowance of Claims 1, 2, 5-15, and 18-24 so that the application may be passed to issue.

Should the Examiner have any questions or desire clarification of any sort, or deem that any further amendment is desirable to place this application in condition for allowance, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,

SCHEEF & STONE, L.L.P.

/jds/

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